

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:09cv181**

APRIL HALL STACEY,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL J. ASTRUE,)
 COMMISSIONER OF SOCIAL)
 SECURITY,)
)
 Defendant.)
 _____)

**AMENDED PRETRIAL
SCHEDULING ORDER**

THIS MATTER is before the Court on the Defendant's Motion to Dismiss for Failure to Prosecute [Doc. 19].

Plaintiff's counsel initiated this matter through the filing of a complaint on May 12, 2009. [Doc. 1]. Thereafter, the office of the Clerk of Court was constrained to make contacts on May 13, 14, and 18 of 2009 with counsel requesting that he file required summonses. On September 16, 2009 a Show Cause Order was entered for failure to effect service of process upon Defendant pursuant to Rule 4(m). [Doc. 5]. On September 22, 2009, the office of the Clerk again had to communicate with counsel to explain the necessary form of response to that Order. Counsel responded with a Motion

for Extension of Time for service by another 120 days. [Doc. 8]. The Court declined such an extraordinary extension, but ordered a 30-day extension. [Doc. 9]. Service was ultimately made, and an answer filed.

Pursuant to this Court's Pretrial Scheduling Order [Doc. 15], Plaintiff's Motion for Summary Judgment and supporting memorandum were due to be filed on or before March 31, 2010. An unopposed Motion for Extension of Time was allowed, amending that deadline to April 29, 2010. [Docs. 17 & 18].

Nothing further has been filed by Plaintiff to date.

The Pretrial Scheduling Order, as amended, predicates the Defendant's filings upon the date of the Plaintiff's filings.

While Plaintiff's counsel has been egregiously inattentive to the Local Rules of this Court and the deadlines applicable to this case, the Court is not inclined to penalize the Plaintiff herself for these shortcomings.

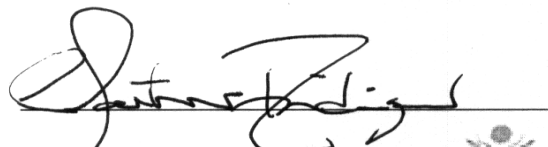
IT IS, THEREFORE, ORDERED that the Pretrial Scheduling Order [Doc. 15] is amended to substitute the following for the existing language at enumerated sentence 2: The Commissioner shall file his Motion for Summary Judgment and Memorandum of Law within 45 days of the entry of this Order. The Office of the Clerk is instructed to make direct personal contact with Plaintiff's counsel of record, inform him of this Order, ascertain whether he

continues to represent the Plaintiff, and if so assist him in verifying that his contact information is correctly entered in the ECF system.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss for Failure to Prosecute is **DENIED** without prejudice to refiling as may be necessary.

IT IS SO ORDERED.

Signed: August 17, 2010


Martin Reidinger
United States District Judge

